



Questions and Answers – Rescission of Nationwide Waivers in the Summer Food Service Program

The following questions were asked during the Summer Food Service Program Memoranda Rescission webinar, presented on October 23, 2018. These answers are intended to explain the impact of the rescission of nationwide waivers on program operations. These answers also provide clarity regarding requirements for State agencies and sponsors in the absence of the nationwide waivers or an individual waiver of statutory or regulatory requirements. **As a reminder, State agencies may request individual waivers for any of the nationwide waivers that were rescinded through [SFSP 01-2019](#): *Summer Food Service Program Memoranda Rescission*, October 11, 2018.**

Offer versus Serve (OVS)

- 1. If a school food authority (SFA) sponsor is using the OVS option, does the SFA have to follow the National School Lunch Program (NSLP) meal pattern to implement OVS in the SFSP?**

Yes. Current regulations at 7 CFR 225.16(f)(1)(ii) allow OVS to be used only by school food authority sponsors. SFA sponsors must follow the regulations governing the use of OVS as outlined in 7 CFR 210.10(e).

- 2. Can an SFA sponsor administer OVS at one of their non-school sites?**

Yes, an SFA sponsor can administer OVS at a non-school site, provided that they follow the requirements for OVS outlined in 7 CFR 210(e).

- 3. How would a non-school site determine age/grade groups of the participating children to be able to do NSLP OVS?**

The NSLP requirements at 7 CFR 210.10(e) outline the use of OVS for grades K through 12. If a non-school site serves children outside of this age group, the site must work with the SFA sponsor to determine how to satisfy the OVS requirements for the population being served.

- 4. If SFA sponsors are the only sponsors allowed to utilize OVS and have to follow OVS under NSLP, do they have to meet the other requirements of the meal pattern such as vegetable subgroups and other restrictions not required in other CNPs?**

The SFSP regulations at 7 CFR 225.16(f)(1)(ii) state that school food authorities must use the rules followed for the National School Lunch Program, as described in 7 CFR 210. This means that the SFAs utilizing the OVS option during the summer months must follow all of the requirements for the offer versus serve option. For more information, refer to the OVS Manual (<https://fns.usda.gov/sites/default/files/cn/SP41-2015av2.pdf>) and SP 41-2015: *Updated Offer versus Serve Guidance for the National School Lunch Program and School Breakfast Program Effective Beginning School Year 2015-2016*, July 21, 2015 (https://fns.usda.gov/sites/default/files/cn/SP41_2015os.pdf).

Meal Times

- 1. With the rescission of the nationwide waiver of meal time restrictions, what are the requirements for meal service times? Is there a certain length of time a meal cannot exceed?**
Regulations at 7 CFR 225.16(c)(1) outline the requirements for establishing meal service times. Three hours must elapse between the beginning of one meal service and the beginning of another meal service, including snacks. Four hours must elapse between lunch and supper when no snack is served in between. Additionally, the regulations do not permit supper meal service beyond 7pm unless a State agency waives the requirement, due to extenuating circumstances. However, with the exception of residential camps, supper must not extend beyond 8pm. The duration of the meal service is also established at two hours for lunch or supper, and one hour for all other meals. State agencies must ensure that all approved meal services comply with these requirements beginning in summer 2019, unless the State or individual sponsor has an approved waiver request.
- 2. If a sponsor uses a staggered meal service, will there be two beginning and ending times to track to keep each session of the staggered meal service within the hour limit?**
Yes, if a sponsor uses a staggered meal service, the sponsor must keep track of all beginning and ending times at all sites and ensure that each meal service is within the one hour limit.

Site Visits

- 1. For sites that operate one-week or less, such as a week-long camp or a one-day youth conference, are both the first week visit and fourth week site review required?**
Yes, in the absence of an approved waiver, all sponsors are required to conduct both the first week site visit and a review of the food service operations within the first four weeks of Program operations, as outlined in 7 CFR 225.15(d)(2) and (3). For sponsors that operate for a short period of time, the review of food service operations, also known as a site review, must occur within the site's period of operation and may be conducted at the same time as the first week site visit.
- 2. If a large sponsor wants a waiver to the first week visit requirement, should the State agency submit the waiver on behalf of the sponsor, and limit the request to the individual sponsor?**
Yes, a State agency may request a waiver of the first week site visit requirement, or any requirement, for one individual sponsor within the State. States may also request statewide waivers that would cover all the sponsors in the State.

Closed Enrolled Sites/ Community Eligibility/ Area eligibility

- 1. Can closed enrolled sites use census data to qualify for the SFSP?**
In the absence of an approved waiver, closed enrolled sites cannot use census data to qualify for participation in the SFSP. While census data was previously allowed to establish area eligibility, the rescission memorandum released on October 11, 2018 rescinded the waiver provided in policy guidance *Summer Food Service Program (SFSP) Waiver for Closed Enrolled Sites*, November 17, 2002. Closed enrolled sites *must* determine eligibility through the approval of applications, as outlined in 7 CFR 225.15(f).

2. **Can a sponsor contact the local SFA to receive a list of children from the local school district to determine eligibility of a closed enrolled site rather than collect income eligibility forms?**

Yes, closed enrolled sites may receive a list of children approved for Free or Reduced-Price meals through the NSLP from a local school district to determine site eligibility. Per regulations at 7 CFR 225.15(f), applications are not necessary if other information sources are available and can be used to determine eligibility of individual children. A list of children eligible to receive Free and Reduced-Price meals from an SFA would qualify as another information source that determines the eligibility of individual children.

3. **If a closed enrolled site was approved using area eligibility in 2018, is the site eligible for 5 years or does it have to start collecting applications in 2019?**

If a closed enrolled site was approved using area eligibility in a previous year, the site must re-establish eligibility in 2019 by collecting income eligibility forms from children enrolled at the site. The sponsor or site may also receive lists of eligible children from the local school district.

4. **Can closed enrolled sites use Community Eligibility Provision (CEP) information to determine eligibility?**

Closed enrolled sites may use CEP data to determine eligibility. Sponsors should use the Identified Student Percentage (ISP) and the 1.6 multiplier to determine if the site is eligible. Since the 1.6 multiplier provides an estimate of the total number of students eligible for free and reduced price meals in CEP schools, the product of the ISP multiplied by 1.6 is used for eligibility purposes. If the result is equal to or greater than 50 percent, meal sites located in the school (or the attendance area of the school) are eligible. Schools in Local Educational Agencies (LEAs) electing to utilize CEP district-wide, or as part of a group of schools electing CEP with a shared ISP, must still use the ISP for the individual school.

5. **If a site is designated as an open site but in practice is closed enrolled, do meals served at that site need to be disallowed based on the rescinded waiver?**

If a site is designated as an open site, it must operate as an open site. State agencies must provide technical assistance to help sponsors and sites properly designate the site type. If the site wishes to become a closed enrolled site, its eligibility must be determined through the method that is specified in the definition of closed enrolled site at 7 CFR 225.2. The method requires the collection of income application forms, and approval of applications will be determined in accordance with 7 CFR 225.15(f). Eligibility may also be determined by collecting lists of eligible children from the local SFA.

Waiver Process

1. **How should State agencies submit completed waiver requests?**

According to the waiver process, once a waiver request is completed, including all of the information outlined in the sample template, State agencies must submit the request to their Regional office. The Regional office will review the waiver and submit to the National office for consideration. If State agencies intend to request waivers for summer 2019, FNS encourages States to submit requests as soon as possible.

2. What is the status of SFSP waiver requests already submitted to FNS?

As noted in the October 11, 2018 memorandum (SFSP 01-2019), State agencies may submit waiver requests to FNS for any of the waivers rescinded by that memorandum. FNS recognizes the importance of these waiver requests for summer operations. For those requests already submitted, FNS will make it a priority to process those as quickly as possible in the order in which they were received. FNS also encourages States to reach out to Regional office contacts to ensure that submissions have been received.

3. Will the waiver requests be an annual requirement? Can States request for a waiver to be valid for a longer period of time?

States may request a waiver for any desired length of time; however, FNS will clearly state the approved duration of the waiver in the response to the waiver request. Once an approved waiver expires, States must request another waiver if they wish to continue a waiver of the same statutory/regulatory provision(s).

4. If the State agency has multiple waiver requests should the State submit a combined request or one for each?

State agencies must submit separate requests for each regulatory provision the State is requesting to waive. For example, if the State is requesting to waive the requirement for first week site visits and the requirements for meal service time restrictions, the State would have to submit two separate requests.

3. Is the State agency required to submit a waiver request from an eligible service provider or can the State agency deny it without submitting the request to USDA?

Per the instructions included in the *Child Nutrition Program Waiver Request Guidance and Protocol – Revised*, State agencies must submit any waiver request they receive from a sponsor to the FNS Regional office for review. However, if the State does not support the approval of the waiver request, they can indicate that when they submit the request.

5. Would a waiver based on a specific sponsor apply to multiple States that organization operates in or only the State that submitted the waiver?

If a sponsor operates in multiple states, any waiver request would only apply to the sites located in the State that requested the waiver.

6. If the State agency wants to submit a waiver request for the entire region, will data information from specific sponsors suffice, or would all sponsors need to submit data to support the request?

State agencies cannot submit waiver requests for an entire region. States are only permitted to submit individual waiver requests for their State. Information included in the waiver should come from all sponsors impacted by the waiver request.

7. Is there more guidance on public notification? Is there a length of time the public notice needs to be available? Does the State agency have to post the public notice prior to submission/approval of the waiver request?

Guidance on the requirement for public notice does not specify how long the public notice must be posted, but section 12(l)(1)(B) of the Richard B. Russell National School Lunch Act provides that States and eligible service providers must provide the notice and information in the same manner they use for similar public notices. In order for a waiver request to be considered

complete, the State agency must provide proof of this public notice. Therefore, it must be posted prior to the submission of the waiver request. The State agency can show sufficient proof of this by, for example, providing a link to the website where the public notice was posted or a copy of the public notice posted in the newspaper.

8. Can the State publish one public notice for multiple waiver requests?

Yes, the State can publish one public notice that includes multiple waiver requests, as long as that is how they customarily provide similar notices.

9. If the Office of Inspector General (OIG) established these waivers were unallowable at the national level, how are they potentially allowable at the State level?

OIG did not make recommendations about the *content* of the waivers, but rather the *process* by which they were issued. As a result, the OIG recommendations addressed by the rescission of these waivers focused on how to correct the waiver process to ensure that USDA meets all statutory requirements when granting waivers.

10. Does the waiver request need to come from the sponsors?

No, waiver requests may originate from either a State or sponsor(s). The waiver must be submitted through the appropriate administering State agency which must submit all requests received from sponsors to their FNS Regional office. In the event a State does not support the sponsor's waiver request, the State may indicate that when submitting the request.

11. Do State agencies have to tell the sponsors that they can request a waiver?

Yes, State agencies must distribute this information to sponsors.

Resources and Technology

1. Many online application systems do not include business rules related to meal times. Did FNS communicate this information to the software vendors which could help reduce or eliminate costs to State agencies?

FNS does not have direct relationships with software vendors. It is incumbent on State agencies to manage contracts with software vendors and ensure that all requirements are accounted for within their systems.

2. Does USDA intend to proceed with rulemaking to eventually develop final rules for all or some of these rescinded waivers?

FNS will identify those flexibilities and policies that should be incorporated into SFSP regulations through notice and comment rulemaking.

3. Will these changes be reflected in the updated SFSP Administrative Guide for Sponsors, and will that be released in time to facilitate training?

Yes, a revised version of the SFSP Administrative Guide for Sponsors will be released to reflect the rescission of the nationwide waivers. It is FNS's intent to release this update as soon as possible.

4. If States request waivers, will there be a different version of the manuals for States to use?

No, there will not be a different version of the manuals published to reflect individual State waiver requests.

- 5. Until resources are updated, will technical assistance be provided to the State agency by FNS on a Management Evaluation instead of a finding and/or fiscal action and corrective action requirement for non-compliance pertaining to rescinded memos?**

Updates to handbooks and other resources do not have a bearing on whether FNS would conduct technical assistance or assess a finding during a Management Evaluation. However, a finding, fiscal action and/or corrective action will not be assessed for actions that were allowable and occurred prior to the rescission of the nationwide waivers.

Seamless Summer Option/SSO

- 1. If an NSLP sponsor's status is approved for the school year, does that meet the requirement of a sponsor must be approved prior to operating a SSO site? Does the SSO site application have to be in approved status prior to operation?**

Yes, the NSLP sponsor must be approved to serve SSO meals prior to the start of operations.

- 2. Do the rescissions apply to Seamless Summer Option also?**

Yes, the rescissions apply to Seamless Summer Option as well.